IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

HELIODORO LARA, an individual, Appellant, v. CITY OF SEATTLE; SEATTLE CITY LIGHT, Respondent.	)	No. 62476-8-I UNPUBLISHED OPINION FILED: March 1, 2010

Ellington, J. — Attorney John Sheridan successfully represented Heliodoro Lara in a discrimination case against Seattle City Light. Lara then challenged Sheridan's fees, alleging they were unreasonable and that Sheridan committed numerous ethical violations warranting disgorgement. The trial court dismissed Lara's claims on summary judgment. The evidence does not support Lara's assertions, and we affirm.

BACKGROUND

In 1997, Sheridan met with Lara and Chuong Van Pham to discuss representing them both in potential race and national origin discrimination lawsuits against Seattle City Light.[1] Sheridan provided Lara with a contingent fee agreement

[1] For details about the underlying litigation, see this court's unpublished opinion in Pham v. City of Seattle (Pham I), 120 Wn. App. 1038, 2004 WL 418016

to review. Lara read and signed the contract at home. At their next meeting, Sheridan read the agreement to Lara. Lara had no questions and returned the signed agreement.

The 1997 agreement expressly excluded appeals from the scope of representation. It provided that Sheridan's firm would receive a percentage of the gross recovery, and in no event would the firm receive less than the amount of any court-awarded fees. This provision, described by the parties as an "election clause," allowed Sheridan to choose whether to take the contingent fee or the fees awarded by the court.

The litigation took a lengthy and circuitous path through state and federal courts to final resolution in 2007. After trial in 2002, a jury returned a verdict in favor of Lara and Pham. Lara was awarded $130,140 in front pay, back pay and noneconomic damages.[2] The court collectively awarded the plaintiffs nearly $300,000 in attorney fees, about $50,000 less than they requested. The court subsequently awarded Lara an additional $66,855 to compensate for the tax consequences of the economic damages award.[3]

Both sides appealed the 2002 judgment. Because the 1997 fee agreement did not contemplate an appeal, Sheridan presented Lara a new fee agreement. Again, Lara took the agreement home to review and sign. He had no questions

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(Mar. 8, 2004) at 1–5.

[2] Pham v. City of Seattle, 159 Wn.2d 527, 532, 151 P.3d 976 (2007). Pham's damages award was significantly greater than Lara's award.

[3] See Blaney v. Int'l Ass'n of Machinists and Aerospace Workers, 114 Wn. App. 80, 55 P.3d 1208 (2002).

when it was discussed at the next meeting. The agreement provided that Sheridan's firm would represent Lara in the appeal in exchange for which Sheridan could choose between court-awarded fees or an additional percentage of the gross recovery.

Lara largely prevailed in two appeals to this court.[4] The city appealed to the Supreme Court, which affirmed in part and reversed in part.[5] On remand, the trial court awarded Lara additional damages, postjudgment interest, expert fees, attorney fees, and interest on attorney fees. The court also awarded a fee multiplier due to the high risk nature of the case.

Sheridan allocated the fee award evenly between the two clients. He elected to take the contingent fee in Pham's case and the court-awarded fees in Lara's.

Shortly after the court's final order, Lara filed a petition for a determination of the reasonableness of Sheridan's fees and costs under RCW 4.24.005. Though cast as a challenge to reasonableness, Lara primarily argued that Sheridan had acted unethically and should be required to disgorge some or all of the fees. Specifically, Lara alleged Sheridan failed to explain how he would be compensated and how court-awarded attorney fees and interest on fees would be allocated between the two clients. Lara also alleged Sheridan improperly renegotiated the fee

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[4] Pham I, 120 Wn. App. 1038, 2004 WL 418016 (Mar. 8, 2004); Pham v. City of Seattle (Pham II), 124 Wn. App. 716, 103 P.3d 827 (2004).

[5] Pham, 159 Wn.2d at 530 (holding the trial court properly refused to award Blaney damages for noneconomic damages and did not abuse its discretion in calculating attorney fees, and remanding for reconsideration of whether a fee multiplier is warranted).

agreement during the representation, violated several rules of professional conduct, and breached his fiduciary duty by choosing different methods of compensation in the two cases.

The parties filed cross motions for summary judgment. The court dismissed most of Lara's claims, and granted his motion to voluntarily dismiss those that remained.[6]

Lara appeals the order denying in part his motion for partial summary judgment and granting in part Sheridan's motion for summary judgment.

DISCUSSION

Lara contends the trial court erred by ruling on summary judgment that Sheridan is entitled to retain the interest on court-awarded attorney fees and that the 1997 and 2003 fee agreements are valid and enforceable. The usual standard of review for summary judgment applies.[7]

Interest

[6] Sheridan argues this court should not consider Lara's appeal because he voluntarily dismissed the entire action by filing his CR 41(a) motion after the court gave its oral decision on summary judgment but before it entered a written summary judgment order. Both Lara's motion and the court's order clearly relate only to those issues not disposed of on summary judgment. While the technically proper procedure would have been to amend the complaint to drop the abandoned claims, we will not expand the order to encompass more than the relief sought or intended. See Orsi v. Aetna Ins. Co., 41 Wn. App. 233, 247, 703 P.2d 1053 (1985).

[7] This court reviews summary judgment decisions de novo, viewing the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. Anderson v. State Farm Mut. Ins. Co., 101 Wn. App. 323, 329, 2 P.3d 1029 (2000). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c).

Neither of the fee agreements addressed interest awarded on fees set by the court. Lara contends that in the absence of such a provision, any interest award belongs to him.

There is no Washington authority for the premise that interest on attorney fees belongs to the client unless otherwise provided by contract. Lara relies by analogy on Luna v. Gillingham.[8] There, an ambiguous contingent fee agreement failed to specify whether an attorney fee awarded by the court would be added to the client's damages for purposes of calculating the contingent fee, or whether the contingent fee would be based upon the damages alone, and any court-awarded fees would apply as a credit against the contingent fee owed by the clients. The court held that the ambiguity must be construed against the attorney drafter and the fee award applied as a credit. The court's conclusion rested in part upon the relative experience and sophistication of the attorney and client: "'The client expects that the fee agreement will provide the sole source of income for the attorney. The attorney, on the other hand, has the technical knowledge and experience to be able to anticipate awards of attorneys' fees.'"[9]

Luna provides no guidance here. The issue there came down to how much of the client's damages award was owed to the attorney as a contingent fee. If the court-awarded fee amount is treated as part of the recovery and the contingent fee is then calculated upon the whole amount, the client will pay more in fees than if the

[8] 57 Wn. App. 574, 789 P.2d 801 (1990).

[9] Id. at 580–81 (quoting Hamilton v. Ford Motor Co., 636 F.2d 745, 749 (D.C. Cir. 1980)).

court-awarded fee amount is simply applied as a credit toward the contingent fee based solely upon the damages verdict. Since the attorney was in a better position to anticipate the situation, the court construed the ambiguity against him. Here, Sheridan accepted the court's award of fees as payment in full, and Lara received his damages in full. Thus, unlike the client in Luna, Lara has no claim to the court-awarded fees or the interest awarded thereupon.

Further, the Luna court's reasoning does not apply here. The concept of interest on monies due is not beyond common experience and understanding. By the time the city made its first payment pursuant to the attorney fee award in 2005, Sheridan's firm had represented Lara and Pham without compensation for eight years. We agree with the trial court's observation that it is simply "intuitive" that "if . . . these fees belong to Mr. Sheridan, . . . the interest belongs to Mr. Sheridan because he's been deprived of his fees."[10]

The 1997 Agreement

Rule of Professional Conduct (RPC) 1.5(b) requires attorneys to communicate to their clients the scope of representation and the basis or rate of fees and expenses, preferably in writing.[11] Lara contends the trial court should have ruled

[10] Report of Proceedings (Aug. 28, 2008) at 18.

[11] RPC 1.5(b) provides: "The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Upon the request of the client in any matter, the lawyer shall communicate to the client in writing the basis or rate of the fee."

that the 1997 fee agreement is unenforceable because Sheridan violated his RPC 1.5(b) duty to adequately and accurately explain the contract. The evidence, however, is to the contrary.

Lara contends Sheridan violated RPC 1.5(b) by utilizing a confusing fee agreement and making "no effort whatsoever" to explain how he would be compensated.[12] But Lara's own testimony belies this assertion. He testified that Sheridan provided him a copy of the fee agreement to read at home and then read the contract to him at their next meeting. Despite the intervening 10 years, Lara specifically recalled that Sheridan discussed the provision stating that the firm would receive no less than the amount of fees awarded by the court. Though Lara now asserts the agreement was confusing, he had no questions about it at the time and does not suggest what more Sheridan should have done to ensure his understanding. Nor does he identify any provision that appears to us confusing.

Lara also complains Sheridan misrepresented the agreement by assuring him that "all recovery would be put into the pot and divided between the three of them."[13] But this simplified explanation appears to be a serviceable description of how the judgment and court-awarded fees would have been distributed had Sheridan opted to take the contingent fee in Lara's case. Since Lara was aware that Sheridan could

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[12] Lara also contends the fee agreement contained several unethical and unenforceable terms, such as one purporting to limit the client's right to enter into a structured settlement. Sheridan concedes that some of the terms were inappropriate. Since none of these terms was ever enforced and none is at issue in this litigation, we need not discuss them further.

[13] Appellant's Br. at 43.

elect to do otherwise, the "one pot" explanation raises no genuine issue of material fact on Sheridan's compliance with RPC 1.5(b).[14]

Lara's final argument is that Sheridan violated RPC 1.5(b) by failing to disclose his practice to "maximize his fee entitlement" and seek interest on court-awarded fees. These "practices" do not require explanation. As set out above, it is common sense that the person entitled to receive an attorney fees award would also receive the interest on the fees if belatedly awarded. Even less in need of explanation is that Sheridan would seek to maximize his compensation. That is the obvious implication of the clause allowing him to elect between court-awarded and contingent fees.

The 2002 Agreement

Lara next contends the court should have voided the 2002 fee agreement because Sheridan breached his fiduciary duty and violated the rules of professional conduct by renegotiating a fee agreement during the representation. We find no merit in this argument.

Lara's argument relies on the premise that Sheridan was obligated to represent him on appeal. If that were so, then the 2002 agreement providing Sheridan's firm with an additional percentage of the gross recovery for appellate work would indeed warrant special scrutiny.[15] "Such a modification is considered to be void or voidable until the attorney establishes 'that the contract with his client was

[14] Lara's argument that Sheridan failed to explain how court-awarded fees would be distributed is similarly unpersuasive—either they would go into the "pot" with Lara's judgment or they would go to Sheridan in lieu of the contingent fee.

[15] Perez v. Pappas, 98 Wn.2d 835, 841, 659 P.2d 475 (1983).

fair and reasonable, free from undue influence, and made after a fair and full disclosure of the facts upon which it is predicated.'"[16]

But the 1997 fee agreement expressly excluded appeals from the scope of representation:

[16] Ward v. Richards & Rossano, Inc, P.S., 51 Wn. App. 423, 428–28, 754 P.2d 120 (1988) (quoting Kennedy v. Clausing, 74 Wn.2d 483, 491, 445 P.2d 637 (1968)).

> NOTE: This agreement does not contemplate an appeal. In the event that the case is appealed to the Court of Appeals or to the Supreme Court, Sheridan & Associates, P.S. and I will enter into a separate agreement.[17]

The 2002 agreement reflects this limitation:

> This agreement is in addition to the agreement I already have signed regarding representation at trial. This agreement in no way affects or modifies the prior agreement; instead, it provides for continued representation in an appeal which has been commenced by the defendant.[18]

Thus, the plain language of both contracts establishes that Sheridan was not obligated under the 1997 agreement to represent Lara on appeal.[19]

Because the 2002 agreement was for work not included in the 1997 agreement, it is not a modification. And because it is not a modification, Lara's arguments concerning Sheridan's ethical and fiduciary duties in modifying or renegotiating a fee agreement are irrelevant. The trial court properly concluded the 2002 agreement is enforceable.

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[17] Clerk's Papers at 66.

[18] Clerk's Papers at 86.

[19] Lara argues, despite explicit language to the contrary, that Sheridan was required to represent Lara on appeal or forsake his fee entirely because no fee is owed under a contingency agreement until there is a recovery. He provides no authority for this proposition, which we find unpersuasive. Indeed, even in the absence of a clear provision limiting the representation, Sheridan would have been entitled to reasonable compensation. See Ward, 51 Wn. App. at 431 n.5 ("when an attorney does not complete or substantially complete services for which he or she was to have been compensated on a contingent fee basis, that attorney is entitled only to reasonable compensation for the services rendered").

CONCLUSION

Lara has produced no evidence to support his assertions of ethical violations warranting disgorgement, and we agree with the court that Sheridan is entitled to the interest awarded on the attorney fee award. Given this disposition, we find it unnecessary to address Sheridan's remaining arguments.

Affirmed.

WE CONCUR: